

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

MARTHA C. MARCHAND,
Plaintiff,

vs.

LAW OFFICE OF CATHERINE SANCHEZ,
CATHERINE SANCHEZ, and FRANCELLEA WRIGHT,
Defendants.

CIV - 05 NO. 1196 DJS LCS

05 NOV 15 PM 4:16
CLERK-ALBUQUERQUE

COMPLAINT FOR FDCA VIOLATIONS

I. Introduction

This is a lawsuit for damages for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* (hereinafter "FDCA"), which prohibits debt collectors from engaging in deceptive and unfair practices.

II. Jurisdiction

1. Jurisdiction of this court arises under 15 U.S.C. §1692k(d).

III. Parties

2. Plaintiff Martha C. Marchand was a resident of this District and at all times material hereto, was a resident of this District.
3. Defendant Catherine Sanchez is an attorney for Therapeutic Innovations and Sanchez has a law office in Albuquerque, New Mexico. Sanchez regularly attempts to collect debts alleged to be due another.
4. Defendant Francella Wright is an attorney in the Law Office of Catherine Sanchez and Wright regularly attempts to collect debts alleged to be due another.

IV. Facts

5. Plaintiff is a "consumer" as defined at 15 U.S.C. Section 1692a(3).
6. The obligation allegedly due Therapeutic Innovations by Plaintiff is a "debt" as defined at 15 U.S.C. Section 1692a(5).
7. Defendants are "debt collectors" as defined at 15 U.S.C. Section 1692a(6).
8. The Defendants regularly attempt to collect debts alleged to be due another.
9. The Defendants are debt collectors subject to the regulations of the Act.
10. Therapeutic Innovations ("TI") provided physical therapy services in 2002 to the Plaintiff for injuries that she received in a motor vehicle accident.
11. On August 5, 2004 Defendants sent out a letter in an attempt to collect a debt in the amount of \$2,339.27 for their client, Therapeutic Innovations ("TI"). See *Exhibit "A."*
12. Plaintiff paid the bill in full by having the two insurance companies involved in the MVA matter pay the bill. Specifically, on June 24, 2002 payment in the amount of \$672.56 was made towards Plaintiff's account by Hartford Insurance Company when a check was issued to TI. See *Exhibit "B"*.
13. The second and final payment was made by Safeco on September 9, 2004 in the amount of \$1,666.71 towards the remaining balance on Plaintiff's account with TI. See *Exhibit "C"*.
14. Accordingly, the total paid by the two insurance companies paid the account in full.
15. On or about June 27, 2005, Defendants filed a lawsuit in Bernalillo County Metropolitan Court, Case No. CV-07432-05, against Plaintiff Marchand for a debt allegedly due to Therapeutic Innovations. See *Exhibit "D."*

16. The Metro Court lawsuit falsely alleged that a debt of \$2,339.27 was due to TI by Plaintiff Marchand.

V. Defendants' Practices and Violations

17. The Defendants violated the Fair Debt Collection Practices Act (hereinafter "FDCPA"), 15 U.S.C. §1692 *et seq.*, which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

18. The Defendants actions violated the FDCPA in that TI had billed the Plaintiff for \$2,339, and the Plaintiff paid TI in full via two insurance settlements. However, some nine months later, the Defendants filed a lawsuit against Plaintiff for the sum of \$2,339. The Defendants actions are a violation of, *inter alia*, §1692e(2)(A).

19. In the lawsuit, the Defendants allege that Plaintiff is liable for attorney's fees, costs, and interest. These claims for money damages and these allegations, jointly and separately, constitute a violation of the §1692e(2)(A).

20. Defendants' actions were intentional and reckless; therefore, punitive damages are requested.

21. Any Judgment in this matter should attach and be effective against Law Office of Catherine Sanchez to the extent it is a separate entity.

VI. Damages.

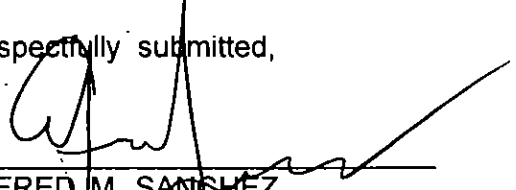
22. Plaintiff has incurred damages as result of Defendants' FDCPA violations. Plaintiff is self-employed (part-time) and has lost revenue as a result of having to defend herself in the lawsuit and attend Court hearings.

23. Plaintiff has also incurred attorney's fees in this matter and will incur further attorney's fees.

24. Plaintiff has incurred mental distress as a result of being sued by the Defendants.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against the Defendants for damages for Defendants' violations of the FDCPA, all damages set forth above, statutory damages, punitive damages, costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k, and for such other relief as may be just and proper.

Respectfully submitted,



ALFRED M. SANCHEZ
Attorney for Plaintiff
301 Gold Ave. SW, Ste. 202
Albuquerque, NM 87102
(505) 242-1979

PLAINTIFF'S

EXHIBIT "A"

Law Offices of

Catherine Sanchez P.C.

Post Office Box 37290

Albuquerque, New Mexico 87176

Phone: (505) 875-1020

Fax: (505) 875-1140

August 5, 2004

Martha C. Marchand
2932 Brooksmoor Rd. SW
Albuquerque NM 87121

RE: THERAPEUTIC INNOVATIONS Account

Dear Ms. Marchand :

This firm represents Therapeutic Innovations in connection with securing payment of \$2339.27 for services rendered to Martha C. Marchand by THERAPEUTIC INNOVATIONS .

We request that you forward a cashier's check or a money order for the balance due. By statute, interest accrues on open accounts starting thirty (30) days after the last date of service, and on the accounts stated from the date the balance is ascertained by the creditor. Payment should be tendered to this firm at the above address. If you are unable to comply with this request for payment in full, please contact Catherine Sanchez at 875-1020 in order to attempt to make satisfactory payment arrangements.

Unless you notify this office within thirty (30) days after receipt of this letter that the validity of this debt, or any portion of it is disputed, we will assume that the debt is valid. If you do notify us of a dispute, we will obtain verification of the debt and mail it to you. Also, upon your written request, within thirty (30) days, we will provide you with the name and address of the original creditor if different from the current creditor.

This firm is acting as a debt collector in this matter. This letter is an attempt to collect a debt, and any information obtained will be used for that purpose. Thank you for your cooperation and prompt attention to this matter.

Very truly yours,

LAW OFFICES OF CATHERINE SANCHEZ P.C.

By:


Catherine Sanchez, Attorneys for
THERAPEUTIC INNOVATIONS

803980.00

PLAINTIFF'S

EXHIBIT "B"

Martha C. Marchand
2932 Brooksmoor SW
Albuquerque, New Mexico 87121

August 30, 2004

Catherine Sanchez
Attorney at Law
P.O. Box 37290
Albuquerque, NM 87176

RE: Therapeutic Innovations Account

Dear Ms. Sanchez,

I acknowledge receipt of your letter of August 5, 2004 and I would like to clarify a few points for you.

- 1) The amount of \$2,339.27 claimed by Therapeutic Innovations is incorrect. I have been informed by The Hartford that a payment in the amount of \$672.56 was made by them on the account on 6/25/02. That reduces the amount claimed to \$1,666.71.
- 2) The last date of services rendered to me was 8/14/02 and yet I received a **one and only** statement of the account over a year later on 8/30/03. This is at the very least poor bookkeeping practice.
- 3) As requested by Safeco, I am forwarding all of the information I have. In addition, on 1/23/03, Safeco paid a fee to Therapeutic Innovations requesting records. I understand that a lien was not filed.

Waiting to hear from you in this matter, I remain,

Sincerely,

Martha C. Marchand

PLAINTIFF'S

EXHIBIT "C"



SAFECO PROPERTY & CASUALTY INSURANCE COMPANIES

SAFECO Insurance Company of America
Central Region
PO Box 461
St. Louis, MO 63166

Phone: (800) 332-3226
(541) 764-2695
Fax: (866) 472-9217
www.safeco.com

Mailing address:
PO Box 461
St. Louis, MO 63166

September 9, 2004

Therapeutic Innovations
Attn: JC Garcia Billing department
5800 Mcleod Ne Suite A
Albuquerque, NM 87109

CC: MARTHA MARCHAND

Insured Name: Jeanette Armenta
Policy Number: Y4772329
Loss Date: March 26, 2002
Claim Number: 622821171015
Claimant: Martha Marchand

Dear Ms. Garcia:

We are issuing a check to you for \$1666.71. Enclosed is a copy of the payment log from Hartford Insurance which shows that a check for \$672.56 was issued to you on June 24, 2002.

We have deducted that amount from the total \$2339.27.

If you have any questions, please contact me.

Sincerely,

Phyllis Kelly
Central Region
SAFECO Insurance Company of America
(800) 332-3226
(541) 764-2695 Fax: (866) 472-9217
phykel@safeco.com

Safeco

Safeco Insurance Companies
Home Office — Safeco Plaza, Seattle, Washington 98185
Safeco Lloyds Insurance Company
Home Office — 1600 N Collins Boulevard, Richardson, TX 75080

No. 4657396

70-2382
718

NOT VALID SIX MONTHS AFTER
DATE SEP 9, 2004

In Payment of MARTHA MARCHAND

PAY TO THE ORDER OF

AMOUNT 1,666.71
COVERAGE ABI

DOLLARS CENTS

THERAPEUTIC INNOVATIONS
5800 MCLEDD RD NE STE A
ALBUQUERQUE NM 87109-2467

\$*1,666.71

LOSS DATE: 03-26-02
POLICY Y04772329

ACS Certified
20930768

ONE THOUSAND SIX HUNDRED SIXTY-SIX DOLLARS AND 71/100

THE NORTHERN TRUST COMPANY
Chicago, IL
Payable Through
Oakbrook Terrace, IL
FOR MARCHAND, MARTHA-
INSURED: ARMENTA, JEANETTE-
CHARTER INSURANCE SERVICES INC
07-0613 07A020B60328

[Signature]
Authorized Signature

DO NOT CASH UNLESS THIS CHECK IS PAID WITHIN SIX MONTHS OF DATE OF DEPOSIT

⑈1657396⑈ ⑆071923828⑆030156650⑈

⑈0000166671⑈

BANK OF AMERICA, N.A.
BANK NUMBER 5334 0118
60196032 6391920095
07080571925/04

PRESENTED
11 OCT 11 2004
146771
41809-24-04
10002722/601

ALBUQUERQUE, NM
FIRST BANK
30708336944

PAY TO THE ORDER OF
FIRST FINANCIAL CREDIT UNION
ALBUQUERQUE, NM 87125-5587
FOR DEPOSIT ONLY
30783694
THERAPY, INC
0813740040

PLAINTIFF'S

EXHIBIT "D"

IN THE METROPOLITAN COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No.

CV-07432-05

THERAPEUTIC INNOVATIONS

Plaintiff,

vs.

Martha C. Marchand,

Defendant(s).

ENDORSED
FILE IN THIS OFFICE

JUN 27 2005

CLERK-METROPOLITAN COURT

COMPLAINT FOR BREACH OF AGREEMENT
AND FOR DEBT AND MONEY DUE

1. Plaintiff is a corporation which transacts business in interstate commerce.

2. On information and belief, Defendant(s) is/are a resident of the County of Bernalillo, State of NM.

3. Defendant Martha C. Marchand did enter into an agreement with Plaintiff for services.

4. Plaintiff did extend to Defendant Martha C. Marchand, credit, cash loans, or advances, with Defendant Martha C. Marchand account and record of account to be relied upon at trial.

5. Pursuant to the approval of Defendant Martha C. Marchand for the extension of credit, Plaintiff did establish an account upon its books and records.

6. Plaintiff extended credit to Defendant Martha C. Marchand in various amounts.

7. After all credits and offsets, Defendant Martha C. Marchand indebted to Plaintiff in the amount of \$2339.27.

8. Defendant's failure to pay as agreed pursuant to the terms and conditions of the agreement constitutes a material breach of said agreement.

9. Although due demand has been made upon Defendant Martha C. Marchand to pay said sum, said Defendant Martha C. Marchand failed and refused to do so.

10. Plaintiff is entitled to reasonable attorneys' fees and costs expended herein, plus interest at the rate of fifteen percent (15%) per annum.

11. Unless you notify this office within thirty (30) days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty (30) days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgement or verification. If you make a written request within thirty (30) days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

WHEREFORE, Plaintiff demands judgment against Defendant(s)
for \$2339.27 plus interest, attorney's fees and costs of suit.

LAW OFFICES OF CATHERINE SANCHEZ

By: Francella Wright
Francella Wright
Attorneys for Plaintiff
P.O. Box 37290
Albuquerque, NM 87176-7290
Telephone: (505) 875-1020

803980.00.